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MAR - 2 2000

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No. 99-658

IN THE
SUPREME COURT OF THE UNITED STATES

JAIME CASTILLO, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF FOR LAW ENFORCEMENT ALLIANCE OF AMERICA, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE OUT OF TIME

COMES NOW the LAW ENFORCEMENT ALLIANCE OF AMERICA, INC. (LEAA), by counsel, and moves this Court for leave to file its Brief as amicus curiae out of time.

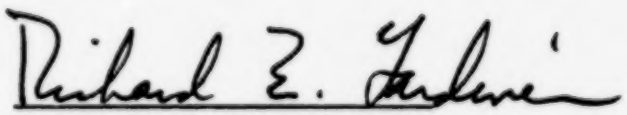
As LEAA is supporting Petitioners, its brief was due on February 28, 2000. Due to a death, below-signed counsel was unable to file the brief by that date.

Counsel for the United States does not object to this motion.

Respectfully submitted,

LAW ENFORCEMENT ALLIANCE OF AMERICA, INC.

By counsel



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STATEMENT OF INTEREST OF AMICUS CURIAE

LEAA is a non-profit, non-partisan advocacy organization made up of tens of thousands of law enforcement professionals, crime victims, and concerned citizens dedicated to making America safer.

LEAA represents its members' interests by assisting law enforcement professionals, securing victims' rights over criminals' rights, seeking criminal justice reforms that target violent criminals, not law-abiding citizens, and explaining, from a law enforcement perspective, why firearms regulation is not effective in controlling crime.[1]

LEAA is committed to preservation of the rights guaranteed by the Bill of Rights. LEAA believes that the Sixth Amendment guarantee of the right to trial by jury is a particularly important right since it is not only a fundamental safeguard of liberty, but is a means by which public confidence in the criminal justice system is maintained in requiring the involvement of citizens in the system. Moreover, direct citizen involvement in the criminal justice system exposes the system to the values of the community and makes citizens aware of the functioning of the system so that, in their capacity as voters, they may seek changes to the system if it does not reflect their values.

Any statutory construction which eliminates the role of

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[1] No party in this case authored any part of this brief. No person or entity, other than LEAA, made any monetary contributions to the preparation or submission of the brief.

the jury in a criminal trial deprives citizens of their rightful participation in the criminal justice process and thus diminishes the other important effects flowing from the jury's role. Because the court of appeals' decision in the instant case deprives citizens of their rightful participation in the criminal justice process, LEAA has an interest in this Court granting Petitioners' Petition and reversing the judgment of the court of appeals.

ARGUMENT

THE COURT OF APPEALS' INTERPRETATION OF 18 U.S.C. § 924(c)(1) VIOLATES THE SIXTH AMENDMENT

The statute at issue in the case at bar, 18 U.S.C. § 924(c)(1), is susceptible of being read as providing that the type of firearm ("firearm" or "machinegun") "use[d] or carrie[d]" by Petitioners is either an element of the offense which must be alleged in the indictment and found by a jury beyond a reasonable doubt or is a sentencing factor to be found by the judge by preponderance of the evidence.

It is a well-established rule that:

> where a statue is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.

United States ex rel. Attorney General v. *Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909).

In the case at bar, the Court of Appeals adopted a construction of 18 U.S.C. § 924(c)(1) which raises "grave and doubtful constitutional questions" since the construction eliminates the jury from the process of determining the crime for which defendants will be punished. Thus, the Court of Appeals construction violates the Sixth Amendment.

The Sixth Amendment provides in part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .

U.S. Constitution, Amend. VI

In *United States* v. *Gaudin*, 115 S.Ct. 2310, 2314 (1995), this Court noted concerning the role of the jury that:

> the application-of-legal-standard-to-fact sort of question . . ., commonly called a "mixed question of law and fact," has typically been resolved by juries.

Thus, *Gaudin* concluded that:

> the historical and constitutionally guaranteed right of criminal defendants to demand that the jury decide guilt or innocence on every issue . . . includes application of the law to the facts.

Id.

The reason for the jury's involvement in determining "guilt or innocence on every issue" was discussed at length in *Duncan* v. *Louisiana*, 391 U.S. 145 (1968). At the time of the adoption of the Sixth Amendment:

> jury trial in criminal cases had been in existence in England for several centuries and carried

> impressive credentials traced by many to Magna Carta. (footnote omitted). Its preservation and proper operation as a protection against arbitrary rule were among the major objectives of the revolutionary settlement (sic) which was expressed in the Declaration and Bill of Rights of 1689.

391 U.S. at 151.

In 1769, Blackstone observed that trial by jury was "the grand bulwark" of English liberties and that:

> other liberties would remain secure only 'so long as this palladium remains sacred and inviolate, not only from all open attacks, (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial . . . .

Jones v. *United States*, 119 S.Ct. 1215, 1225 (1999)(citing 4 W. Blackstone, Commentaries on the Laws of England 342-344 (1769)).

Removing from the jury the power to determine the type of firearm used or carried by Petitioners, and thereby eliminating the jury's role in determining the crime for which Petitioners shall be punished, "sap[s] and undermine[s]" the right to trial by jury and "introduc[es]" an "arbitrary method[] of trial . . . ."

Blackstone emphasized that a jury trial required that:

> the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbors . . . .

4 W. Blackstone at 343 (cited in *Gaudin*, 115 S.Ct. at 2313).

This Court has recognized that one of the key reasons for jury trials was that otherwise trials would be held "before judges dependent upon the Crown alone for their salaries . . . ." *Duncan*, 391 U.S. at 152. Indeed, the Declaration of Independence "stated solemn objections to the King's . . . 'depriving us in many cases, of the benefits of Trial by Jury . . . .'" *Id.*

Thus, *Duncan* explained:

> Those who wrote our constitution knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. . . . Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury

> trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power — a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges.

391 U.S. at 156.

In the case at bar, the very concern emphasized in *Duncan* -- leaving the liberty of criminal defendants in the hands of a single judge -- is manifested by the decision of the court of appeals.

In *Williams* v. *Florida*, 399 U.S. 78 (1970), this Court revisited the question of the reasons for trial by jury, rather than by the judge, explaining:

> [T]he essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence.

399 U.S. at 100.

In addition to the important purposes for trial by jury discussed above, there are other significant, but more subtle, purposes for participation by juries in the criminal justice process.

First, trial by jury is a means by which public confidence in the criminal justice system is maintained. In their role as jurors, citizens who would otherwise have no other participation in the system, become directly involved in the system. Thus, the public can be assured that the views of the citizenry, and not merely the views of those employed by the criminal justice system, are reflected in the decisions made by the system. Indeed, since juries are responsible for deciding the most critical issue in the entire criminal justice process -- the guilt of the defendant (and thus the range of his punishment) -- trial by jury is the single most significant factor in ensuring public confidence in the criminal justice system.

Second, direct citizen involvement in the criminal justice system, through jury trials, exposes the system to the values of the community.[2] This allows the system continuously to reexamine its activities to ensure that it reflects the values of those it is intended to serve.

Finally, service on juries makes citizens aware of the functioning of the system. Thus, in their capacity as voters, they may seek changes to the system if it does not reflect their values.

In view of the critical role for the jury that this Court has

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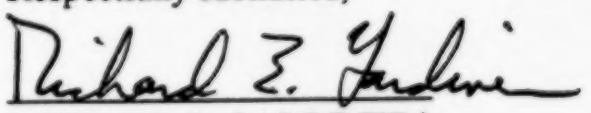
[2] Indeed, "juries have become increasingly representative of the community. They are now chosen from lists — such as voter registration, car registration, and telephone directories — which, if not fully representative are nevertheless revolutionary improvements over the 'key man' system which prevailed in many systems." Searching for the "Tail of the Dog": Finding "Elements" of Crimes in the Wake of *McMillan* v. *Pennsylvania*, 22 Seattle U. L. R. 1057, 1108-9 (1999).

long recognized, the only proper construction of 18 U.S.C. § 924(c)(1) is that the type of firearm used or carried by Petitioners is an element of the offense which must be alleged in the indictment and found by a jury beyond a reasonable doubt; the type of firearm is not a sentencing factor to be found by the judge by preponderance of the evidence.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,



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